

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 717

THE UNITED STATES OF AMERICA, APPELLANT

vs.

**CLARENCE POER, SIDNEY SOLOMON POPE, ODELL
JAMES SHEPHERD AND VERLIN FEE**

**APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE EASTERN DISTRICT OF KENTUCKY**

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A In United States Supreme Court

No. 11209—U. S. District Court

UNITED STATES OF AMERICA, APPELLANT

vs.

CLARENCE POER, SIDNEY SOLOMON POPE, ODELL JAMES SHEPHERD,
VERLIN FEE, APPELLEES

Appeal from the District Court of the United States for the
Eastern District of Kentucky

1 In United States District Court, Eastern District
of Kentucky

November Term, 1943, At London

Indictment

(Filed Nov. 22, 1943)

The Grand Jurors of the United States of America, duly impaneled, sworn, and charged to inquire within and for the Eastern District of Kentucky, upon their oaths do find and present:

1. That on the 3rd day of November 1942, a general election was duly and legally held within and for the State of Kentucky, for the purpose of electing a United States Senator to serve in the Congress of the United States of America, as provided by the laws of the United States, and that pursuant to the laws of the State of Kentucky, a polling place was duly opened for the purpose of holding said election and voting in Pansy Precinct No. 53-A, Harlan County, Kentucky.

2. That at said election in said Pansy precinct No. 53-A, Harlan County, Kentucky, many persons who were citizens and residents of the United States and of Harlan County, Kentucky, were entitled to cast their ballots and vote at said election for a duly qualified person who was then and there a candidate for the office of Senator of the United States, in that they were then and there duly registered as such voters and possessed all the necessary and requisite qualifications provided by the laws of the State of Kentucky to entitle them to vote for such person at said election in said precinct; that the names of all of said legal and qualified voters in said precinct who were entitled to vote for said candidate at said election are to the Grand Jurors unknown, and that those who are known to the Grand Jurors are too numerous to include in this indictment and that said persons will be hereinafter referred to in this indictment as voters.

3. That the said voters and each of them then and there possessed the right and privilege guaranteed and secured to them by the Constitution and laws of the United States, at said election in said precinct, to choose and to vote for a candidate for the office of United States Senator to represent the people of the State of Kentucky and the United States in the Congress of the United States; and the further right and privilege to have their said votes preserved, returned and recorded by the duly constituted and acting election officers in said precinct at said election; and honestly preserved, returned, recorded, counted, and given their intended effect and certified by the County Board of Election Commissioners within and for Harlan County, Kentucky, as the true result of said election in said precinct; that said voters and each of them then and there possessed the right and privilege guaranteed and secured as aforesaid to express by their votes their choice of a candidate as aforesaid and the further right and privilege to have their said expressions of choice accorded and given their full value and effect, that is to say, the right and privilege that the value and effect of their said votes and expressions of choice should not be impaired, lessened, diminished, diluted, and destroyed by fictitious ballots falsely cast, counted, recorded, returned and certified for a candidate opposed to the candidate for the office of United States Senator for whom the aforesaid voters had voted.

4. That at said election in said Pansy precinct No. 53-A, Harlan County, Kentucky, Clarence Poer, and Sidney Solomon Pope acted as the duly appointed and qualified Judges of said Election, and Odell James Shepherd acted as the duly appointed and qualified Clerk of said election, and Verlin Fee acted as the duly appointed and qualified Sheriff of said election at said precinct aforesaid, and that they and each of them then and there assumed their respective duties and obligations aforesaid as such Judges, Clerk, and Sheriff of election and acted and professed to act in their respective official capacities aforesaid, and then and there conducted said election in said precinct.

5. That on said date, to wit: the 3rd day of November 1942, at the voting place legally selected for voting at and located in Pansy precinct No. 53-A, Harlan County, Kentucky, at the general election aforesaid, the aforesaid voters in said precinct at said election duly marked and cast their votes on the ballots provided for said purpose pursuant to law, for the duly and legally qualified person who then and there was the Republican candidate for election to the office of United States Senator to represent the people of the State of Kentucky and the United States in the Congress of the United States of America, by appropriately, properly and lawfully placing a cross mark on said bal-

lots to denote their desire to vote for and that they did legally mark their ballots and vote for said Republican candidate.

6. That on or about the 15th day of October 1942, and continuously until and including the date of the returning of this indictment, at Gulston, in Harlan County, State of Kentucky, in the Eastern District of Kentucky, and within the jurisdiction of this Court, they, the said Clarence Poer, Sidney Solomen Pope, Odell James Shepherd, and Verlin Fee, hereinafter referred to as defendants, did unlawfully, wilfully, knowingly, and feloniously conspire among themselves and with each other and with others whose names are to the Grand Jurors unknown, to injure and oppress divers citizens of the United States of America, namely the legal and qualified voters as herein defined of said Pansy precinct No. 53-A, Harlan County, Kentucky, in the free exercise and enjoyment of the rights and privileges guaranteed and secured to them and each of them by the Constitution and laws of the United States of America, that is, the rights and privileges described and set forth in paragraph 3 of this indictment, and particularly the right and privilege to exercise the right of suffrage, to wit, to vote for a legally qualified person for the office of Senator of the United States to represent the people of the State of Kentucky and the United States in the Congress of the United States, which person was then and there a candidate for the same, and the right and privilege to have their said votes and each of them, for the person aforesaid, accurately, honestly, and truthfully preserved, recorded, returned, counted, and certified as actually and in fact cast.

That said felonious and unlawful conspiracy was in substance and effect as follows, to wit:

That previous to said date, to wit, the 3rd day of November 1942, and while said election was being held and conducted, and while said legal and qualified voters were casting their ballots in said Pansy precinct No. 53-A, at said election, and after the same had been so legally cast and had been duly placed in the ballot box of said precinct at said election for preservation, transfer, and delivery to the office of the Clerk of the County Court of Harlan County, Kentucky, to be there counted and certified by the Election Commissioners of Harlan County, Kentucky, the said defendants then and there and for the unlawful and felonious purpose of affecting, causing and promoting a dishonest, incorrect, and fraudulent count of the votes of said legal and qualified voters and preventing the actual and intended choice of said voters from being expressed, did unlawfully, wilfully, knowingly, feloniously, corruptly, and fraudulently agree to remove and tear from the official book of ballots and stub book furnished for said election at said precinct, a large number of blank and unvoted ballots and

to then and there mark, forge and vote the same for the candidate of the Democratic party for the office of Senator of the United States, opposing the candidate for whom the aforesaid voters had voted, in order to deprive the aforesaid voters of their right and privilege of having their and each of their legal votes so cast at said election fully, freely, and fairly cast, counted, and certified and accorded and given full value and effect; that said defendants further agreed and conspired to place in the ballot box with the legal ballots of the aforesaid voters said false, forged, and fictitious ballots, with the intent and purpose that said illegal ballots be returned, counted, certified, and constitute a part of the total vote as recorded and returned by them as officers of the election in said precinct at said election, so as thereby to diminish, impair,

5 dilute, and destroy the effect of the choice of said voters and to wrongfully affect the result of said election in said precinct and to cause and procure a dishonest, inaccurate, and fraudulent count and certification by the Harlan County Board of Election Commissioners of the votes actually cast at said precinct.

That the purpose and object of said unlawful and felonious conspiracy was further in substance and effect that they, the said defendants, would make a false and fraudulent return and report of said election by padding the ballot box with a large number of said falsely made and fictitious ballots; that they would also make a false and fraudulent report and return of said election and the manner of conducting the same, in order to induce and cause said Harlan County Board of Election Commissioners to make a count of said false and fraudulent votes, by writing on the stub book the names of persons taken from the registration lists, thereby falsely showing that said persons had appeared at said precinct and demanded a ballot and voted in said precinct at said election, whereas, in truth and in fact, they had not done so; that they would make up and return such false, fictitious and forged poll books, stub books, and ballots to the Harlan County Board of Election Commissioners, for the purpose of causing them to falsely count said fraudulent and fictitious votes, thereby effecting a fraudulent count of said votes by the County Board of Election Commissioners of Harlan County, Kentucky.

OVERT ACTS

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further find and present:

That to effect the object and purpose of said felonious and unlawful conspiracy, the defendants committed the following overt acts, to wit:

6 1. The said defendants, on the 3rd day of November 1942, at the voting place legally selected for voting at and lo-

ated in Pansy precinct No. 53-A, exercised their respective duties and obligations as Judges, Clerk, and Sheriff of said election and assumed to act in their respective offices and capacities and then and there conducted said election.

2. The defendants, on the 3rd day of November 1942, at the voting place legally selected for voting in and located at the Pansy precinct aforesaid, while the voters aforesaid and each of them were duly making out, marking, and casting their votes aforesaid for the legally qualified candidate of the Republican party for the election to the office of Senator in the Congress of the United States to represent the people of the State of Kentucky, and the United States, and after said voting had been completed, illegally and corruptly removed a large number of said ballots from the official stub, poll, and ballot book, and unlawfully, wilfully, knowingly, corruptly, and feloniously marked and voted the same for the Democrat candidate for the office of Senator of the United States and deposited said ballots in the ballot box; that said ballots were not ballots voted at said election but were forged and fictitious and the inclusion thereof in the final count of ballots returned at said election deprived the aforesaid voters of the rights and privileges guaranteed to them by the Constitution and laws of the United States as hereinbefore described; that at the time said ballots were so forged and illegally voted, they, the said defendants, forged and wrote the name of some fictitious voter on the stub book at the place where each of said ballots were removed, thereby falsely representing and pretending that said fictitious voter had appeared at said election in said precinct and voted said ballot; that the said fraudulent and fictitious ballots were thereupon placed in the ballot box, together with the false and fraudulent report and returns of said election and delivered by said defendants to the County Court Clerk's office, at Harlan, Harlan County, Kentucky, to be delivered to the County Board of Elec-

7. tion Commissioners; that said false and fraudulent return of said ballots, stubs and ballot book was so returned for the purpose of promoting and causing to be made a dishonest, incorrect, and unfair count, return, and certification of the result of the election in said precinct, which said count impaired, lessened, diminished, diluted, and destroyed the integrity and effectiveness of the ballots and choice of said voters as expressed by their ballots.

3. The said defendants on said date, to wit: the 3rd day of November 1942, by reason of the wrongful and fraudulent acts aforesaid, unlawfully, wilfully, knowingly, falsely, and corruptly caused and induced the Board of Election Commissioners of Harlan County, Kentucky, to count, return, and certify that the Demo-

cratic candidate for said office of United States Senator had received more votes than had been cast for said candidate.

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

JOHN T. METCALF,
United States Attorney.

18-51.

8 No. 11209. United States District Court, Eastern District of Kentucky. The United States of America vs. Clarence Poer, Sidney Solomon Pope, Odell James Shepherd, Verlin Fee. Indictment. T. 18 Sec. 51 USCA. Unlawfully conspiring to injure citizens in their right secured to them by the Constitution and laws of the U. S., to vote and have an honest count of their votes at an election for Senator of the U. S. 1 ct. A true bill, R. H. Barker, Foreman. Filed Nov. 22, 1943. A. B. Rouse, Clerk, U. S. District Court. Ruby K. Middleton, Sidney Held, W. M. Jones, H. M. Pennington, M. F. Engle, FBI Handwriting Expert.

9. In United States District Court

Demurrer

Filed Dec. 14, 1943

The defendants, Clarence Poer, Sidney Solomon Pope, and Verlin Fee, and each of them, without waiving their motion to quash filed herein, but specifically relying thereon, and reserving all objections to the jurisdiction of the Court over the persons of the defendants and the subject matter of this action, demur to the indictment, and each count thereof, filed herein, upon the following grounds:

1. That neither the said indictment, nor any count thereof, states facts sufficient to constitute a crime against the United States.

2. That said indictment is duplicitous, in the more that one separate and distinct offense is charged in the various counts in the indictment.

3. That none of the paragraphs of the indictment states facts sufficient to constitute a criminal offense against the United States and do not state any violation of the laws of the United States, and that said indictment, and each count thereof, contains mere conclusions and does not plead facts, and that said allegations are irrelevant, immaterial, extraneous, prejudicial, and argumentative.

4. That said indictment fails to describe and to particularize the alleged combination and conspiracy to violate laws of the United States and particularly the terms and provisions of Title 18, Section 51, U. S. C. A. (Section 19 of the Criminal Code), or the alleged attempt or the alleged combination and conspiracy with sufficient definiteness and certainty and so specifically as to enable these defendants to prepare and make their defense thereto, and to plead an acquittal or conviction thereunder in bar of any other proceeding against them based on the same matters or things, or any of them, on which the indictment is based.

5. That said indictment fails to describe and to particularize the alleged combination and conspiracy, or the means allegedly agreed upon to accomplish the purpose thereof, with sufficient definiteness and certainty, and so specifically as to charge an offense against the United States, so as to enable this Court, from an inspection of the indictment, to ascertain whether, if carried into effect, the alleged means would constitute a violation of the laws of the United States and particularly Title 18, Section 51, U. S. C. A. (Section 19 of the Criminal Code).

Wherefore, the above-named defendants pray for an order sustaining the above demurrer to the indictment filed herein, and for all other proper relief incident thereto.

GOLDEN and LAY,
HARRY B. MILLER,
Attorneys for Defendants.

Copy of above demurrer delivered to Hon. J. T. Metcalf, United States Attorney, this December 14, 1943.

HARRY B. MILLER,
Attorney for Defendants.

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In United States District Court

Order sustaining demurrer

Filed December 20, 1943

This cause coming on to be heard upon the defendants' demurrer to the indictment herein, briefs having been considered and the Court having heard oral arguments thereon, is of the opinion that Section 51 of Title 18, United States Code Annotated (Section 19, Criminal Code) upon which the indictment herein is founded, as properly interpreted and construed, does not apply to the offenses charged to have been committed by the defendants herein, and it is therefore ordered that the demurrer

be, and it is hereby, sustained to which ruling the plaintiff, United States of America, objects and excepts.

H. CHURCH FORD, *Judge*.

In United States District Court

Memorandum opinion

Filed Jan. 6, 1944

On December 20, 1943, an order was entered sustaining a demurrer to the indictment herein.

The purpose of this memorandum is to make it clear that the judgment of the Court in sustaining the demurrer was based solely upon the construction of section 19 of the Criminal Code, 18 U. S. C. A. § 51, the statute upon which the indictment is founded.

The general allegations of the indictment are, in substance, that an election was held in Pansy precinct No. 53-A, Harlan County, Kentucky, on the 3rd day of November 1942, for the purpose of electing a United States Senator at which many legally qualified citizens and residents of that precinct cast their votes; that defendants who were the election officers, unlawfully conspired with each other, and with other persons whose names are to the grand jury unknown to injure and oppress divers citizens, qualified voters of the precinct, in the free exercise and enjoyment of rights and privileges guaranteed and secured to them by the Constitution and laws of the United States. These general allegations are followed by a specific description of the particular acts charged to constitute the alleged crime as follows:

"* * * the said defendants then and there * * * did unlawfully, wilfully, knowingly, feloniously, corruptly, and fraudulently agree to remove and tear from the official book of ballots and stub book furnished for said election at said precinct, a

13 large number of blank and unvoted ballots and to then and there mark, forge, and vote the same for the candidate of the Democratic party for the office of Senator of the United States, opposing the candidate for whom the aforesaid voters had voted, in order to deprive the aforesaid voters of their right and privilege of having their and each of their legal votes so cast at said election fully, freely, and fairly cast, counted, and certified and accorded and given full value and effect; that said defendants further agreed and conspired to place in the ballot box with the legal ballots of the aforesaid voters said false, forged, and fictitious ballots, with the intent and purpose that said illegal ballots be returned, counted, certified, and constitute a part of the total

vote as recorded and returned by them as officers of the election in said precinct at said election so as thereby to diminish, impair, dilute, and destroy the effect of the choice of said voters and to wrongfully affect the result of said election in said precinct and to cause and procure a dishonest, inaccurate, and fraudulent count and certification by the Harlan County Board of Election Commissioners of the votes actually cast at said precinct."

The overt acts alleged are that at the time and place of the Congressional election described in the indictment, the defendants, as officers of the election, conducted it in the exercise of their respective official duties; that they illegally and corruptly removed a large number of ballots from the official ballot book and forged and voted them for the Democratic candidate for the office of Senator of the United States and deposited them in the ballot box which they delivered to the County Clerk's Office at Harlan, Harlan County, Kentucky, to be delivered to and counted by the County Board of Election Commissioners, and that they, "by reason of the wrongful, fraudulent acts aforesaid, unlawfully, wilfully, knowingly, falsely, and corruptly caused and induced the Board of Election Commissioners of Harlan County, Kentucky, to count, return, and certify that the Democratic candidate for said office of United States Senator had received more votes than had been cast for said candidate."

The question presented for decision was whether the right of qualified voters, at a Congressional election, to have the full value and effect of their votes secured free from impairment or dilution by forged or fictitious ballots fraudulently cast and counted for a candidate opposed to the candidate for whom they voted, is a Constitutional right to which Congress intended to afford protection by the provisions of section 19 of the Criminal Code of the United States.

That the right of qualified citizens to vote in a Congressional election and to have their votes counted as cast are rights "secured by the Constitution" within the meaning of and protected by section 19 of the Criminal Code, is not open to question, *Ex parte Yarbrough*, 110 U. S. 651, *United States v. Mosely*, 238 U. S. 383. Where a primary election is an integral part of the procedure for choosing a representative in Congress, the same rights of voters are protected by the same statute (*United States v. Classic* 313 U. S. 299).

But these cases seem to fall far short of making the Federal Statute applicable to the character of conduct charged in this indictment.

In *United States v. Bathgate*, 246 U. S. 220, in holding the Federal Statute not applicable to a conspiracy to bribe voters at a general Congressional election, the Court pointed out that by the Act of February 8, 1894, 28 Stat. 36, repealing various provisions

of the Act of 1870, which prescribed a comprehensive system to secure freedom and integrity of elections, Congress evidenced its policy "to leave the conduct of elections at which its members are chosen to state law alone, except where it may have expressed a clear purpose to establish some further or definite regulation" and that, in the light of this policy, section 19 of the Federal Criminal Code was not intended to apply to or protect the general public from all reprehensible acts tending to injuriously affect the freedom, honesty or integrity of Congressional elections, but "the right or privilege to be guarded, as indicated both by the language employed and context, was a definite, personal one, capable of enforcement by a court, and not the political, nonjudicable one common to all that the public shall be protected against harmful acts, * * *"

The strict construction and limited application thus placed upon the statute is controlling here and requires that the demurrer to the indictment be sustained upon the ground that section 19 of the Criminal Code of the United States, as so construed, does not apply to or embrace a conspiracy to commit the acts charged in the indictment. There is no Federal statute which covers the reprehensible election fraud commonly referred to as "ballot-box stuffing." According to the established policy of Congress,

16 as interpreted by the Supreme Court in the Bathgate case, the protection of the public from such type of election crimes is left to State laws (*United States v. Gradwell*, 253 U. S. 476; *Chavez v. United States*, 261 F. 174 (8 Cir.); *United States v. Kantor*, 78 F. (2d) 710 (2 Cir.); *Steedle v. United States*, 85 F. (2d) 867 (3 Cir)).

H. CHURCH FORD, Judge.

17

In United States District Court

Order allowing appeal

Filed January 18, 1944

This cause having come on this day before the Court on petition of the United States of America, plaintiff herein, praying an appeal to the Supreme Court of the United States for reversal of the judgment and order in the cause sustaining the demurrer of the defendants to the indictment therein, and that a duly certified copy of the record in said cause be transmitted to the Clerk of the Supreme Court of the United States, and the Court having heard and considered said petition, together with plaintiff's statement showing the basis of the jurisdiction of the Supreme Court to entertain an appeal in said cause, the same having been duly filed with the Clerk of this Court, it is, therefore, by the

Court ordered and adjudged, that the plaintiff herein, the United States of America, be, and it is hereby, allowed an appeal from the order and judgment of this Court sustaining the demurrer of the defendants to the indictment, to the Supreme Court of the United States, and that a duly certified copy of the record in said cause be transmitted to the Clerk of the Supreme Court.

It is further ordered, that the United States of America be, and it is hereby, permitted a period of forty days in which to file and docket the said appeal in the Supreme Court of the United States.

Dated at Lexington, Kentucky, this 18th day of January 1944.

By the Court:

H. CHURCH FORD,

*United States District Judge,
Eastern District of Kentucky.*

18

In United States District Court

Petition for appeal

Filed January 18, 1944

Comes now the United States of America, plaintiff herein, and states that on the 20th day of December 1943, the United States District Court for the Eastern District of Kentucky entered a judgment and order sustaining a demurrer to the indictment herein, and that the United States of America, feeling aggrieved at the ruling of the District Court in sustaining said demurrer, prays that it may be allowed an appeal to the Supreme Court of the United States for a reversal of said judgment and order, and that a transcript of the record in this cause, duly authenticated, may be sent to the Supreme Court of the United States.

Petitioner submits and presents to the court herewith a statement showing the basis of the jurisdiction of the Supreme Court to entertain an appeal in this cause.

UNITED STATES OF AMERICA,

JOHN T. METCALF,

*United States Attorney,
Eastern District of Kentucky.*

19-32

In United States District Court

Assignment of errors

Filed January 18, 1944

Comes now the United States of America, by John T. Metcalf, United States Attorney for the Eastern District of Kentucky,

and avers that in the record proceedings and judgment and order herein there is manifest error and against the just rights of the said plaintiff in this, to wit:

1. That the court erred in sustaining the demurrer to the indictment.

2. That the court erred in holding that there is "no federal statute which covers the reprehensible election fraud commonly referred to as 'ballot box stuffing.'"

3. That the court erred in holding that "the right of qualified voters, at a Congressional election, to have the full value and effect of their votes secured free from impairment or dilution by forged or fictitious ballots fraudulently cast and counted for a candidate opposed to the candidate for whom they voted, is [not] a Constitutional right to which Congress intended to afford protection by the provisions of section 19 of the Criminal Code (18 U. S. C. 51) of the United States."

4. That the Court erred in holding "that section 51 of Title 18, United States Code Annotated (section 19, Criminal Code); upon which the indictment herein is founded, as properly interpreted and construed, does not apply to the offenses [of knowingly and wilfully conspiring to cause a false count of the votes cast at an election for the purpose of electing a United States Senator, by placing in the ballot boxes false and fictitious ballots] charged to have been committed by the defendants herein."

JOHN T. METCALF;
United States Attorney,
Eastern District of Kentucky.

33-34

In United States District Court

Order filing notice of appeal, etc.

Filed January 19, 1944

Came John T. Metcalf, United States Attorney for the Eastern District of Kentucky, and tendered and offered for filing Notice of Appeal, Citation, and praecipe for Transcript of Record, service of each of which is shown on the face thereof to have been accepted by Harry B. Müller, counsel for the Appellees, and the Court being advised,

It is ordered that the same be now filed and noted of record herein, and the Clerk will include this order in the record on appeal.

H. CHURCH FORD, Judge.

35 (Citation in usual form showing service on Clarence Poer
et al. omitted in printing.)

36 In United States District Court.

Præcipe

Filed January 19, 1944

To the CLERK, *United States District Court for the Eastern District of Kentucky*:

The appellant, the United States of America, hereby directs that in preparing the transcript of the record in this cause in the United States District Court for the Eastern District of Kentucky, you include the following:

1. Docket entries and minute entries showing return of the indictment, filing of demurrer thereto, entry of order sustaining demurrer, and filing of memorandum opinion of Judge Ford in reference to order sustaining demurrer.

2. Indictment.

3. Demurrer.

4. Order sustaining demurrer.

5. Memorandum opinion of Judge Ford in reference to order sustaining demurrer.

6. Petition for appeal to the Supreme Court.

7. Statement as to the jurisdiction of the Supreme Court.

8. Assignment of errors.

9. Order allowing appeal.

10. Notice of service on appellees of petition for appeal, order allowing appeal, assignment of errors, and statement as to jurisdiction.

37 11. Citation.

12. *Præcipe*.

JOHN T. METCALF,
United States Attorney,
Eastern District of Kentucky.

Service of the foregoing *Præcipe* for Transcript of Record is acknowledged this 19th day of January 1944.

HARRY B. MILLER,
Counsel for Appellees.

38 (Clerk's certificate to foregoing transcript omitted in
printing.)

14

UNITED STATES VS. CLARENCE POER ET AL.

39

In the Supreme Court of the United States

October Term, 1943

No. 717

Statement of points to be relied on and designation of record

Filed March 8, 1944

Pursuant to Rule XIII, paragraph 9 of this Court, appellant states that it intends to rely upon all of the points in its assignments of error.

Appellant deems the entire record, as filed in the above-entitled cause, necessary for the consideration of the points relied upon.

CHARLES FAHY, *Solicitor General*.

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Supreme Court of the United States

No. 717, October Term, 1943

~~THE~~ UNITED STATES OF AMERICA, APPELLANT

vs.

CLARENCE POER ET AL.

Order noting probable jurisdiction

March 6, 1944

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted, and the case is consolidated with No. 716 for hearing.

[Endorsement on cover:] File No. 48210. D. C. U. S., Eastern Kentucky. Term No. 717. The United States of America, Appellant vs. Clarence Poer, Sidney Solomon Pope, Odeil James Shepherd and Verlin Fee. Filed February 18, 1944. Term No. 717 O. T. 1943.